HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition no. 114 of 2001 (MS)
Old No. 36239 of 1996

1. Smt. Krishna Kochar w/o Sri S.P. Kochar
   R/o 82, Rajpur Road, Dehradun
2. Satya Pal Cochar S/o Sri S.L. Kochar,
   R/o 82, Rajpur Road, Dehradun .....Petitioners

Versus

1. Board of Revenue U.P.
2. Additional Commissioner, Garhwal Division
   Pauri
3. Assistant Collector, Dehradun
4. State of U.P.
5. Municipal Board, Dehradun ..... Respondents

Sri Alok Singh, Sr. Advocate for the petitioner
Standing Counsel for respondents no. 1 to 4 and Sri B.D. Upadhyay for respondent no. 5.

Dated: 15.5.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Alok Singh, Sr. Advocate, assisted by Sri D. Barhwal, Advocate counsel for the petitioner, Standing Counsel for respondent no. 1 to 4 and Sri B.D. Upadhyay for respondent no. 5.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the orders dated 7.8.1996, 31.10.1985 and 2.3.1982 passed by the respondents no.1, 2 and 3 respectively.

Briefly stated according to the case of the petitioners they purchased plots no. 23,24,25,31,32/1, 32/2,37, 40 and 47

through registered sale deed dated 11.9.1967 from Sri Ram. On 10.5.1968 proceedings under Section 115-C of the U.P.Z.A. & L.R. Act were initiated and dropped in regard to khasra Nos. 31 and 32/2 vide order dated 30.9.1970 by the Assistant Collector. On the report of Tehsildar present proceedings were initiated before the Assistant Collector, Dehradun under section 39 of the Land Revenue act, with regard to khasra no. 23, 24, 25, 31, 32/1, 32/2 37, 40, 46 and 47 recorded in 1359F. of village Zakhan. The case was numbered as 11/81-82.

The Assistant Collector, vide his order dated 2.3.2982 decided the case and allowed the application filed by the Tehsildar for correction of the entries and further observed that the name of the petitioners Smt. Krishna Kochar and Satyapal Kochar be expunged from Khasra No. 379 and 381 respectively. Being aggrieved by the order dated 2.3.1982 passed by the Assistant Collector; Dehradun petitioners preferred a revision before the Commissioner being revision no. 84 of 82-83 and 85 of 82-83. The Additional Commissioner vide order dated 31.10.1985 dismissed both the revisions.

Against the order passed by the Additional Commissioner the petitioners preferred a revision before the Board of Revenue, who dismissed the same vide order dated 7.8.1996.

The respondents have filed the counter affidavit and have submitted that in the year 1359F plots no. 23, 24, 25, 31, 32/2, 37, 40, 46 & 47 were shown as Banjar and that land belongs to the Government. There was a forged entry in the remark column in the name of one Sri Ram and some part was shown as grove. The petitioners got their names illegally entered in the possession of the land subsequently. When this fact came into the notice of the authorities, proceedings under section 39 of

the L.R. Act were taken and the respondent no. 3 passed the order on 2.3.1982 for cancellation of the names of the petitioners on the ground that Sri Ram was not the Bhumidhar of the land in question and infact the entry in his name was totally forged in nature he had no authority and right to sell the land to the petitioners.

The counsel for the petitioners has submitted that proceedings under U.P. Land Revenue Act, being summary in nature shall not decide the rights or title of the parties. The proceedings are just fiscal in nature. Alternative remedy is available to the petitioners under 222-B of the U.P.Z.A. & L.R. Act, or a civil suit for declaration of their rights.

Allahabad High Court in Ram Bharose Lal vs. State of U.P. and others, R.D. 1990 page 72 where it has been observed as under:

"By now it is well settled that where the dispute is in mutation proceedings which do not adjudicate upon rights or title of the parties, this Court need not interfere under Article 226 of the Constitution. In such mattes person aggrieved shall have rider to seek remedy in the appropriate court."

Allahabad High Court in the case Ishu vs. State of U.P. and others 2003 (94) RD 217 has further held as under:

"The quintessence of he decisions cited above and the provisions of section 40-A bolls down for the view that orders emanating from proceedings having complexion of summary proceedings and arising out of sections 33, 34, 39, 40, 41 and 54 of the Act shall not bar any suit in a competent court for the adjudication of a right of a person."

The Apex Court in the case Smt. Sawarni vs. Smt. Inder Jaur and others, 1997 (1) All. C.J. 126 has held that mutation

does not extinguish or create title nor has presumptive value on the title. It entitles the person to pay land revenue only. The observations of the Apex Courts are quoted below:

"Further the lower appellate court has not come to any positive finding that Inder Kaur was the daughter of Gurxax Singh, He has been swayed away by the so-called mutation in the revenue record in favour of Inder Kaur. Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question."

Similar view has been taken in the case Bindeshwari vs. Board of Revenue and others [2002 (93) R.D. 134].

The main relief sought by the petitioners is to set aside the orders passed by the competent authorities under U.P. Land Revenue act, allowing the application of the respondent no. 5 and declaring the petitioners as unauthorized occupants. As a matter of fact, the mutation proceedings may be under Sec. 34 of U.P. Land Revenue Act, or under some other similar Act, but the legal effect in both the events remains the same. The mutation proceedings do not adjudicate the rights and title of the parties.

The petitioners have filed a copy of the plaint of Suit No. 77 of 1982, which shows that the civil suit regarding the title of the property in dispute is pending before the Civil Court. The respondents in their counter affidavit has stated that the civil suit has been dismissed on 25.5.2005 against which an appeal is still pending. The counsel for the petitioners has submitted that four first appeal no. F.A. 43 of 2005, F.A. 44 of 2005, F.A. 45 of 2005 and F.A. 46 of 2005 are still pending. Whatever the

position may be, it is clear that civil proceedings regarding the title of the land in dispute are still pending and have not achieved finality. Thus the best course for the parties to get the dispute settled from the Civil Court.

From a perusal of the record it is evident that the entry in favour of the petitioners have been treated to be forged on account of the fact that the land was Banjar and the predecessor has not title of the same. A perusal of the record shows that the entry in the name of the petitioners have been treated to be forged because of the predecessor's title, when in point of fact the predecessor or his successor representing the estate has not been made a party and no opportunity was given to him before holding to the contrary. The matter requires scrutiny by impleading the predecessor or his heirs representing the estate as a party to the proceedings. Gaon Sabha is also required to prove the entry in its favour. However, these questions will also depend on the findings recorded in the civil proceedings.

In view of the above, the orders dated 7.8.1996, 31.10.1985 and 2.3.1982 passed by the respondents no.1, 2 and 3 respectively are set aside. The matter is sent back to the Assistant Collector, who shall pass fresh orders. However, it is made clear that the parties shall abide by the decision of the Civil court pending in appeal. Till then the parties are directed to maintain status quo.

Accordingly, writ petition is allowed. No order as to costs.

Dated: 15.5.2006 **Rajesh Tandon J.**

*Dhyani